

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 552

FINAL READING

Introduced by White, 8; Mello, 5.

Read first time January 21, 2009

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to construction; to amend section 81-2402,
2 Reissue Revised Statutes of Nebraska; to adopt the
3 Nebraska Construction Prompt Pay Act; to harmonize
4 provisions; to provide an operative date; and to repeal
5 the original section.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 10 of this act shall be known
2 and may be cited as the Nebraska Construction Prompt Pay Act.

3 Sec. 2. For purposes of the Nebraska Construction Prompt
4 Pay Act:

5 (1) Contractor includes individuals, firms, partnerships,
6 limited liability companies, corporations, or other associations of
7 persons engaged in the business of the construction, alteration,
8 repairing, dismantling, or demolition of buildings, roads, bridges,
9 viaducts, sewers, water and gas mains, streets, disposal plants,
10 water filters, tanks and towers, airports, dams, levees and canals,
11 water wells, pipelines, transmission and power lines, and every
12 other type of structure, project, development, or improvement
13 coming within the definition of real property and personal
14 property, including such construction, repairing, or alteration
15 of such property to be held either for sale or rental. Contractor
16 also includes any subcontractor engaged in the business of such
17 activities and any person who is providing or arranging for labor
18 for such activities, either as an employee or as an independent
19 contractor, for any contractor or person;

20 (2) Owner means a person (a) who has an interest in any
21 real property improved, (b) for whom an improvement is made, or
22 (c) who contracted for an improvement to be made. Owner includes
23 a person, an entity, or any political subdivision of this state.
24 Owner does not include the State of Nebraska;

25 (3) Owner's representative means an architect, an

1 engineer, or a construction manager in charge of a project for
2 the owner or such other contract representative or officer as
3 designated in the contract document as the party representing the
4 owner's interest regarding administration and oversight of the
5 project;

6 (4) Real property means real estate that is improved,
7 including private and public land, and leaseholds, tenements, and
8 improvements placed on the real property;

9 (5) Receipt means actual receipt of cash or funds by the
10 contractor or subcontractor; and

11 (6) Subcontractor means a person or an entity that has
12 contracted to furnish labor or materials to, or performed labor or
13 supplied materials for, a contractor or another subcontractor in
14 connection with a contract to improve real property. Subcontractor
15 includes materialmen and suppliers.

16 Sec. 3. (1) When a contractor has performed work in
17 accordance with the provisions of a contract with an owner, the
18 owner shall pay the contractor within thirty days after receipt by
19 the owner or the owner's representative of a payment request made
20 pursuant to the contract.

21 (2) When a subcontractor has performed work in accordance
22 with the provisions of a subcontract and all conditions precedent
23 to payment contained in the subcontract have been satisfied, the
24 contractor shall pay the subcontractor and the subcontractor shall
25 pay his, her, or its subcontractor, within ten days after receipt

1 by the contractor or subcontractor of each periodic or final
2 payment, the full amount received for the subcontractor's work
3 and materials based on work completed or service provided under
4 the subcontract for which the subcontractor has properly requested
5 payment, if the subcontractor provides or has provided satisfactory
6 and reasonable assurances of continued performance and financial
7 responsibility to complete the work.

8 Sec. 4. When work has been performed pursuant to a
9 contract, a party may only withhold payment:

10 (1) For retainage, in an amount not to exceed the
11 amount specified in the contract, if applicable, until the work is
12 substantially complete;

13 (2) Of a reasonable amount, to the extent that such
14 withholding is allowed in the contract, for any of the following
15 reasons:

16 (a) Reasonable evidence showing that the contractual
17 completion date will not be met due to unsatisfactory job progress;

18 (b) Third-party claims filed or reasonable evidence that
19 such a claim will be filed with respect to work under the contract;
20 or

21 (c) Failure of the contractor to make timely payments for
22 labor, equipment, subcontractors, or materials; or

23 (3) After substantial completion, in an amount not to
24 exceed one hundred twenty-five percent of the estimated cost to
25 complete the work remaining on the contract.

1 Sec. 5. Except as provided in section 4 of this act, if
2 a periodic or final payment to (1) a contractor is delayed by more
3 than thirty days after receipt of a properly submitted periodic
4 or final payment request by the owner or owner's representative
5 or (2) a subcontractor is delayed by more than ten days after
6 receipt of a periodic or final payment by the contractor or
7 subcontractor, then the remitting party shall pay the contractor or
8 subcontractor interest due until such amount is paid, beginning on
9 the day following the payment due date at the rate of one percent
10 per month or a pro rata fraction thereof on the unpaid balance.
11 Interest is due under this section only after the person charged
12 the interest has been notified of the provisions of this section
13 by the contractor or subcontractor. Acceptance of progress payments
14 or a final payment shall release all claims for interest on such
15 payments.

16 Sec. 6. The Nebraska Construction Prompt Pay Act shall
17 not modify the remedies available to any person under the terms of
18 a contract in existence prior to the operative date of this act or
19 by any other statute.

20 Sec. 7. The Nebraska Construction Prompt Pay Act does not
21 apply to improvements to real property intended for residential
22 purposes when the residence consists of no more than four
23 residential units.

24 Sec. 8. The Nebraska Construction Prompt Pay Act applies
25 to contracts or subcontracts entered into on or after October 1,

1 2010.

2 Sec. 9. The following provisions in any contract or
3 subcontract for construction work performed within the State of
4 Nebraska shall be against public policy and shall be void and
5 unenforceable:

6 (1) A provision that purports to waive, release, or
7 extinguish rights to file a claim against a payment or performance
8 bond, except that a contract or subcontract may require a
9 contractor or subcontractor to provide a waiver or release of
10 such rights as a condition for payment, but only to the extent of
11 the amount of the payment received;

12 (2) A provision that purports to make any state law other
13 than that of Nebraska applicable to or governing any contract for
14 construction within the state; or

15 (3) A provision that purports to require that the venue
16 for a court or arbitration hearing be held at any location outside
17 of the state.

18 Sec. 10. (1) Any liquidated or unliquidated claim against
19 any political subdivision of this state arising from construction
20 performed for such political subdivision shall: (a) Be presented
21 in writing to the individual or officer as set forth in subsection
22 (2) of this section; (b) state the name of the claimant and the
23 amount of the claim; and (c) identify the item or service for which
24 payment is claimed or the time, place, nature, and circumstance
25 giving rise to the claim. All claims shall be filed within one

1 hundred eighty days after the date of substantial completion of the
2 construction project.

3 (2) A construction contract entered into by any political
4 subdivision of this state may provide the name and location of
5 the office in which a claim under this section may be filed. In
6 the absence of such provision, a written claim shall be filed as
7 follows:

8 (a) Claims against a city of the metropolitan, primary,
9 first, or second class shall be filed with the appropriate city
10 clerk;

11 (b) Claims against a village shall be filed with the
12 village clerk;

13 (c) Claims against a county shall be filed with the
14 county clerk; and

15 (d) Claims against any other political subdivision shall
16 be filed with the person who executed the contract on behalf of the
17 political subdivision or that person's successor in office.

18 (3) The applicable political subdivision shall issue a
19 decision on the claim within ninety days after receipt thereof.
20 If no decision has been issued after such period, the claim shall
21 be deemed to be denied in whole and the claimant may commence an
22 action in accordance with subsection (4) of this section.

23 (4) If a claim is denied in whole or in part, a claimant
24 may bring a civil action on the claim. An action under this
25 subsection may only be brought within two years after the denial of

1 the claim or the date upon which the claim is deemed to be denied.
2 Any such action shall be in the nature of an original action and
3 not an appeal and shall be commenced in the district court of
4 the county in which the construction project at issue was located.
5 Either party may appeal from the decision of the district court.

6 (5) Notwithstanding any other provision of law in
7 Chapters 13, 14, 15, 16, 17, and 23, claims against a political
8 subdivision of this state arising from construction performed for
9 such political subdivision shall be governed by this section.

10 Sec. 11. Section 81-2402, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 81-2402 As used in the Prompt Payment Act, unless the
13 context otherwise requires:

14 (1) Agency shall mean the state and any agency,
15 department, office, commission, board, panel, or division of the
16 state. Agency shall include the University of Nebraska and the
17 Nebraska state colleges;

18 (2) Bill shall mean a proper billing or invoice which
19 requests a payment and which is supplemented by all necessary
20 verification and forms required by agency rules and regulations to
21 process payments;

22 (3) Creditor shall mean any person, corporation,
23 association, or other business concern engaged in a trade or
24 business, either on a for-profit or not-for-profit basis, and
25 providing any goods or services to an agency;

1 (4) Good faith dispute shall mean:

2 (a) A contention by the agency that goods delivered or
3 services rendered were of less quantity or quality than ordered or
4 specified by contract, faulty, or installed improperly; or

5 (b) Any other reason giving cause for the withholding
6 of payment by the agency until the dispute is settled, except
7 that failure to give notice as prescribed in section 81-2405 shall
8 preclude an agency from claiming a good faith dispute in the case
9 of a defective or improper billing;

10 (5) Goods shall mean any goods, supplies, materials,
11 equipment, or other personal property but shall not mean any real
12 property; and

13 (6) Services shall mean any contractual services,
14 including, but not limited to, architectural, engineering,
15 medical, financial consulting, or other professional services, any
16 construction services, and any other personal services but shall
17 not mean any services performed as an officer or employee of any
18 agency.

19 Sec. 12. This act becomes operative on October 1, 2010.

20 Sec. 13. Original section 81-2402, Reissue Revised
21 Statutes of Nebraska, is repealed.